

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
SBC IP Communications, Inc.)	CC Docket No. 99-200
Petition for Limited Waiver of)	
Section 52.15(g)(2)(i) of the)	
Commission's Rules Regarding)	
Access to Numbering Resources)	

**AT&T REPLY IN OPPOSITION TO SBCIP
PETITION FOR LIMITED WAIVER**

Pursuant to the Commission's Public Notice in the above-captioned proceeding¹ AT&T Corp. ("AT&T") submits this Reply in Opposition to the Petition filed by SBC IP Communications, Inc. ("SBCIP") for a limited waiver of Section 52.15(g)(2)(i) of the Commission's rules.² SBCIP seeks to obtain numbering resources directly from the

¹ SBC IP Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, CC Docket No. 99-200, DA 04-2144 (July 16, 2004) ("*SBCIP Petition*"). SBCIP is an information service provider affiliate of SBC Communications, Inc.

² Section 52.15(g)(2)(i) of the Commission's rules provides that an applicant seeking North American Numbering Plan ("NANP") numbering resources must be "authorized to provide service in the area for which the numbering resources are being requested." *See* 47 C.F.R. § 52.15(g)(2)(i). The Commission has interpreted this rule to require carriers to provide, as part of their applications for additional numbering resources, "evidence (*e.g.*, state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource[s]." Information service providers are not eligible for assignment of NANP telephone numbers under the existing rules. Report and Order and Further Notice of Proposed Rulemaking, *Numbering Resource Optimization*, CC Docket No. 99-200, 15 FCC Rcd 7574, 7613 ¶ 97 (2000) ("*NRO Report and Order*").

North American Numbering Plan Administrator (“NANPA”) and/or the Pooling Administrator (“PA”) for use in deploying IP-enabled services, including Voice over Internet Protocol (“VoIP”) services, on a commercial basis to residential and business customers.³ The comments show that SBCIP’s petition should be denied, and Section 52.15(g)(2)(i) of the Commission’s rules should remain in effect until the Commission adopts final numbering rules in the *IP-Enabled Services* proceeding.⁴

The comments make clear that the *SBCIP Petition* is inappropriate because the issue raised by SBCIP is currently under consideration in the Commission’s *IP-Enabled Services* proceeding.⁵ As BellSouth states:

“Direct access to telephone numbers by providers of VoIP service is merely one of a vast number of complex and critical issues surrounding the regulatory treatment of IP-enabled services. This one issue cannot and should not be decided in a vacuum. The public interest requires that the Commission consider the broader implications and recognize that the grant of waiver in advance of the Commission’s ruling in the *IP-Enabled Services* proceeding will establish a precedent that others are likely to follow in the interim. Thus the Commission is obligated to make a decision that addresses all of the key public interest issues that already have been identified by the Commission in the *IP-Enabled Services* proceeding as important considerations to protecting the public interest.”⁶

³ *SBCIP Petition*, at 1.

⁴ See Notice of Proposed Rulemaking, *IP-Enabled Services*, WC Docket No. 04-36, 19 FCC Rcd 4863, 4915 ¶ 76 (2004) (“*IP-Enabled Services NPRM*”).

⁵ See *IP-Enabled Services NPRM*, 19 FCC Rcd 4863, ¶ 76. In the *IP-Enabled Services NPRM*, the Commission asked “whether any action relating to numbering resources is desirable to facilitate or at least not impede the growth of IP-enabled services, while at the same time continuing to maximize the use and life of numbering resources in the North American Numbering Plan.” *Id.* ¶ 76

⁶ BellSouth, at 3.

In the *IP-Enabled Services* proceeding, the Commission received numerous comments on proposals to modify Section 52.15(g)(2)(i).⁷ The comments filed in the *SBCIP* proceeding demonstrate that a grant of the relief SBCIP requests while the Commission is considering proposals on the very same subject would end run the pending notice and comment proceeding for no sustainable reason.⁸

The comments also show that the *SBCIP Petition* presents no special circumstances warranting a deviation from the general rule limiting the assignment of numbering resources to state-certificated carriers.⁹ As Time Warner Telecom states, “SBC IP makes no effort to demonstrate that its waiver is based on special circumstances. This omission is likely because there are no circumstances special to SBC IP. SBC IP is

⁷ See, e.g., Consumers Union, at 27; Reply Comments of AT&T, at 25; CTC, at 4; EarthLink, at 8-9; Level 3 Communications, at 17; Nebraska PSC, at 4; Pac-West Telecomm, at 15; T-Mobile, at 8-9; Verizon, at 38.

⁸ See, e.g., Time Warner Telecom, at 2 (“During the pendency of the IP-Enabled services rulemaking, however, the Commission should decline to proceed through waiver, because the SBC IP waiver raises questions of general applicability and because of the complexities associated with the application of the Commission’s numbering policies to VoIP providers at this time”). See also Iowa PUC, at 2 (“This broad policy question should be addressed in the pending rule making proceeding, not a limited waiver docket”); Pennsylvania PUC, at 1 (“[T]his very issue is currently pending before the Commission in the IP services proceeding mentioned above and SBC IP has not shown any compelling need to address the issue at this time”).

⁹ Pursuant to Section 1.3 of the Commission’s rules, the Bureau may waive a rule upon a showing of “good cause.” See 47 C.F.R. § 1.3. In so doing, the Bureau may take into consideration certain special circumstances, such as hardship to the parties, but a waiver of the Commission’s rules is appropriate only when special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

not in a unique position.”¹⁰ The *SBCIP Petition* presents no evidence that SBCIP or other IP providers have experienced difficulty in obtaining numbers, or that the LECs have impeded the process in any manner. Instead, the comments demonstrate that VoIP providers routinely obtain NANP telephone numbers by purchasing Primary Rate Interface (“PRI”) ISDN lines from the LECs.¹¹ As the Iowa Utilities Board states “SBCIP and other VoIP providers already have access to telephone numbers and to the market.”¹² According to Vonage, PRIs can be readily obtained in almost all markets, except “those areas where the incumbent carriers are protected from competition.”¹³

The comments thus expose the *SBCIP Petition* as a thinly veiled attempt to tilt the competitive playing field in SBCIP’s favor. As Vonage states, “[u]nconditionally granting SBCIP’s petition at this time would simply bestow SBCIP with a significant competitive advantage over other VoIP providers given its affiliate relationship with SBC

¹⁰ Time Warner Telecom, at 4. *See also* Pennsylvania PUC, at 1 (“SBC-IP’s undocumented allegations have not met the ‘good cause’ standard for the granting of a waiver of the Commission’s rules regarding accessing numbers”).

¹¹ *See, e.g.*, PointOne, at 2-3 (“Typically, the VoIP provider also uses this retail product to interconnect with the PSTN so it can send and receive certain types of traffic between its network and the carrier networks. In this arrangement, the competitive LEC terminates the VoIP traffic on the PSTN or delivers the traffic to another carrier for local termination on the PSTN”); Vonage, at 2-3 (“Vonage’s experience with competitive local exchange carriers (‘CLECs’) is that the locations, calling scopes and installation schedules are satisfactory. Additionally Vonage has been able to obtain PRIs and DIDs in most markets”).

¹² Iowa Utilities Board, at 1. *See also* Pennsylvania PUC, at 2 (“Any alleged benefits or efficiencies stemming from SBC IP having direct access to numbering resources and, thus, having the ability to achieve Type 2 interconnection arrangements throughout its service territory, will accrue directly to SBC IP and SBC, Inc., given that SBC IP probably obtains its numbers from SBC, Inc. at this time”).

¹³ Vonage, at 3. *See also* PointOne, at 3.

Communications, Inc.”¹⁴ While SBCIP claims that direct access to numbering resources will encourage more efficient commercial arrangements for the exchange of traffic between VoIP providers and LECs, direct access to numbering resources could provide SBCIP with a first mover advantage.¹⁵ As PointOne states “[i]n this highly competitive market, first movers have the ability to gain significant advantages over their competitors. Principles of fairness and equity dictate that the Commission not accord first mover advantage to any one provider through regulatory happenstance.”¹⁶ No public interest is served by providing SBCIP with an undeserved competitive edge.

The parties take little comfort in SBCIP’s promise that if it is given direct access to numbering resources through NANPA, it will fully comply with the Commission’s numbering requirements.¹⁷ Some question SBCIP’s ability or willingness to meet the

¹⁴ Vonage, at 5.

¹⁵ The Bureau recently granted special temporary authority (STA) to SBCIP to obtain numbering resources from the PA for the purposes of conducting a limited, non-commercial trial of VoIP services. Order, *Administration of the North American Numbering Plan*, CC Docket No. 99-200, DA 04-1721 (rel. June 17, 2004). The IP providers believe that the STA, in conjunction with the direct access to numbers SBCIP now seeks, will give SBCIP a first mover advantage. See, e.g., PointOne, at 4; Vonage, at 4.

¹⁶ PointOne, at 4. Sprint claims (at 4) that the Commission can resolve the issue by granting blanket waivers to all similarly situated IP providers. As Time Warner Telecom makes clear, however, the fact that other IP providers are similarly situated is grounds for *denial* of the *SBCIP Petition*. See Time Warner Telecom, at 5 (“[T]his waiver request, based on facts that are identical to a large class of VoIP providers, does not make out the unique or extraordinary circumstances required to justify waiver of the Commission’s numbering rules”).

¹⁷ *SBCIP Petition*, at 10. See also SBC Comments, *IP-Enabled Services*, WC Docket No. 04-36, at 88-91.

Commission's local number portability ("LNP") requirements.¹⁸ Others express particular concern with SBCIP's unsupported claim that it will meet the "facilities readiness" standard of Section 52.15(g)(2)(ii), which requires the applicant to show that "its facilities are in place or will be in place to provide service within sixty (60) days of the numbering resources activation date."¹⁹ The state public utilities commissions argue that SBCIP has failed to identify the "facilities readiness" standards it must meet, and as the NYDPS states (at 3), "SBC-IP should not be permitted to substitute its own rules in place of established facilities readiness criteria."²⁰ While SBCIP claims that it "expects

¹⁸ See, e.g., BellSouth, at 4-5; Time Warner Telecom, at 9-10; Ohio PUC, at 2-4. The Ohio PUC claims that VoIP providers should be required to maintain the original rate center designation of numbers following porting for routing and rating purposes. While the Commission has required CMRS providers porting-in wireline numbers to do so (see, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability*, CC Docket No. 95-116, 18 FCC Rcd 23697, 23708-9, ¶ 28, (2003)), the Commission has never imposed rate center requirements in the VoIP context, because these requirements are fundamentally inapposite to IP services. As Time Warner Telecom states (at 10) "the Commission currently does not require location portability, or the ability of consumers to take numbers from one geographic area to another. In a VoIP world, such limitations are inapposite." See First Report and Order, *Telephone Number Portability*, CC Docket No. 95-116, 11 FCC Rcd 8352, 8448, ¶ 184 (1996).

¹⁹ The facilities readiness requirement is an important indicator of a number applicant's intention and ability to use the numbers it receives. See *NRO Report and Order*, ¶ 97. See also 47 C.F.R. § 52.15(g)(2)(ii) (requiring that the applicant for initial numbering resources "is or will be capable of providing service within 60 days of the numbering resources activation date").

²⁰ See also Iowa Utilities Board, at 3 ("SBCIP claims its aforementioned 'commitments' are adequate to meet the FCC's goals, but it appears that SBCIP is merely agreeing to comply with some, but not all, of the Commission's existing regulations. SBCIP should not be given credit for saying it will comply with the law"); NYDPS, at 3 ("The Petition appears to suggest that SBC-IP's short list of self-created criteria should be exhaustive. These criteria alone are insufficient for determining whether a carrier is prepared to provide service prior to receiving initial numbering resources").

favorable results” from its limited, non-commercial trial of VoIP services,²¹ the Commission’s facilities readiness requirements cannot be met by predictions or promises of future compliance.²²

The parties offer little support for resolving, in this proceeding, SBCIP’s claim that it can utilize its soft switch and gateways to offer services more efficiently if given the numbering resources it requests.²³ As BellSouth states:

“The issue of interconnection serves to highlight the interrelatedness of all of the key public interest issues surrounding VoIP. Carriers have vastly different obligations when interconnecting their networks for the exchange of traffic with other carriers than carriers have when providing service to end-users. For the purposes of providing VoIP services, a fundamental question that SBCIP should address is how it plans to interconnect with carriers and how the interconnection arrangements will impact its fulfillment of other public interest obligations such as 911.”²⁴

The relief SBCIP requests would require the Commission to develop alternative interconnection and compensation rules for VoIP providers on an interim basis for no purpose, because VoIP providers currently experience little difficulty in obtaining numbers from the LECs. Thus the *SBCIP Petition* needlessly raises a host of issues that should be addressed in other regulatory proceedings.

²¹ *SBCIP Petition*, at n.2.

²² The Commission has made it clear that “[t]he burden is on the carrier to demonstrate that it is both authorized and prepared to provide service before receiving initial numbering resources [citations omitted].” *NRO Report and Order*, ¶ 97.

²³ *SBCIP Petition*, at 5. *See, e.g.*, Pennsylvania PUC, at 1 (“[T]he alleged benefits of interconnection efficiencies stemming from the granting of this waiver are minor compared with the major implications to state authority.”)

²⁴ BellSouth, at 7-8.

CONCLUSION

The record in this proceeding shows that the Commission should not permit SBCIP to end run the *IP-Enabled Services* proceeding by obtaining numbers directly from the NANPA or the PA. Today, VoIP providers like SBCIP have little difficulty obtaining numbers by partnering with LECs connected to the public switched telephone network. It is also clear that the Commission's rule limiting the availability of numbers to certified telecommunications carriers continues to play an important role in ensuring that finite numbering resources are used efficiently. SBCIP has failed to show any special circumstance or immediate need warranting a waiver of the Commission's rule. Its Petition accordingly should be denied.

Respectfully submitted,

AT&T CORP.

By /s/ Richard A. Rocchini
Lawrence J. Lafaro
Stephen C. Garavito
Richard A. Rocchini
Its Attorneys

One AT&T Way
Room 3A227
Bedminster, NJ 07921
(908) 532-1843

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing AT&T Reply in Opposition to SBCIP Petition for Limited Waiver was delivered by electronic mail or U.S. first class mail, postage prepaid, on this 31st day of August 2004, to the parties listed below.

/s/ Hagi Asfaw

Hagi Asfaw

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Via ECFS

Best Copy and Printing, Inc.
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Fcc@bcpiweb.com

Angela N. Brown
Richard M. Sbaratta
BellSouth Corporation
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375-0001

Joseph K. Witmer
David Screven
Assistant Counsel
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
jowitmer@state.pa.us
dscreven@state.pa.us

Dawn Jablonski Ryman
General Counsel
John C. Graham
Assistant Counsel
Public Service Commission of the State
of New York
Three Empire State Plaza
Albany, NY 12223-1350

Steven T. Nourse
Matthew J. Satterwhite
Assistant Attorneys General
Public Utilities Commission of Ohio
Public Utilities Section
180 E. Broad Street, 9th Floor
Columbus, OH 43215

John Ridgway
Dennis Rosauer
Iowa Utilities Board
350 Maple Street
Des Moines, Iowa 50319

Staci L. Pies, V.P.
Governmental and Regulatory Affairs
PointOne
6500 River Place Blvd.
Building 2, Suite 200
Austin, TX 78750

Jack Zinman
SBC Communications, Inc.
1401 Eye Street, N.W.
Suite 400
Washington, D.C. 20005

Norina Moy
Richard Juhnke
Sprint Corporation
401 9th St., N.W.
Suite 400
Washington, D.C. 20004

Don Shephard
Time Warner Telecom, Inc.
228 Blanchard Road
Braintree, VT 05060

Kelsi Reeves
Time Warner Telecom
830 S. Royal Street
Alexandria, VA 22314

William B. Wilhelm, Jr.
Ronald W. Del Sesto, Jr.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Attorneys for Vonage Holdings Corp.